

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)

MB Docket No. 87-268

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**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION
OF THE SEVENTH REPORT AND ORDER
AND
EIGHTH REPORT AND ORDER**

Adopted: March 3, 2008

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By the Commission:

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I. INTRODUCTION

1. On August 6, 2007, we adopted a new, and final, Table of Allotments for digital television (“DTV”) providing all eligible stations with channels for DTV operations after the DTV transition on February 17, 2009.¹ The final DTV Table accommodates all eligible broadcasters, reflects to the extent possible the channel elections made by broadcasters, and is consistent with efficient spectrum use. The final DTV Table also establishes the channels and facilities necessary to complete the digital transition and ultimately will replace the existing DTV Table at the end of the DTV transition.²

¹ *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, 22 FCC Rcd 15581 (2007) (“*Seventh Report and Order*” and “*Eighth Further Notice*”).

² The post-transition DTV Table will be codified at 47 C.F.R. § 73.622(i). The revisions to the post-transition table made herein are attached hereto in Appendix A. The current DTV Table, which is contained in 47 C.F.R. § (continued....)

The existing DTV Table continues to govern stations' DTV operations until the end of the DTV transition. This *Memorandum Opinion and Order and Report and Order* resolves all petitions for reconsideration and related issues in connection with the final DTV Table of Allotments.

2. We received 124 timely filed petitions for reconsideration of the *Seventh Report and Order* reflecting 221 requests for action on individual stations.³ The vast majority of the petitions request specific changes to the DTV Table and/or Appendix B facilities.⁴ In this *Memorandum Opinion and Order on Reconsideration*, we address these specific requests as well as several more general issues raised by some petitioners. In general, we have accommodated the requests made by petitioners for changes to the DTV Table and/or Appendix B to the extent possible consistent with the interference and other standards outlined in the *Seventh Further Notice of Proposed Rule Making*⁵ and the *Seventh Report and Order* in this proceeding.⁶ A large number of the petitions requested changes to Appendix B

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73.622(b), will become obsolete at the end of all authorized pre-transition DTV operations. The current NTSC Table, which is contained in 47 C.F.R. § 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. We will address any rule amendments necessitated by the end of analog service in a later proceeding.

³ There were several petitions for reconsideration and other requests filed after the 30-day statutory deadline. See 47 U.S.C. § 405 (requiring that petitions for reconsideration be filed within 30 days following public notice of the order complained of). To ensure that the Table is finalized sufficiently before the end of the transition so that all stations may file applications to construct their post-transition facilities, we treat late-filed petitions and other pleadings as requests for further rulemaking where these comments and requests seek minor adjustments and do not cause impermissible interference to other stations. In these circumstances, and given that the relief requested appears noncontroversial, we grant the adjustments requested. 5 U.S.C. § 553(b)(3)(B) (good cause exception to notice and comment). Where late-filed petitions request more significant changes that may affect other stations, those requests are denied herein. In addition, Media General Communications Holdings, LLC has withdrawn the petitions it filed for WSPA, Spartanburg, SC and WMBB, Panama City, FL; W. Russell Withers, Jr. has withdrawn the petition it filed for WDHS, Iron Mountain, MI; and Connecticut Public Broadcasting, Inc. has withdrawn its petition for WEDN, Norwich, CT. On February 14, 2008, Bahakel Communications LTD ("Bahakel") filed a Request for Partial Withdrawal of Petition for Rulemaking requesting that it be permitted to withdraw part of a petition it had previously filed for WBBJ, Jackson, TN. See Request for Partial Withdrawal of Petition for Rulemaking of Bahakel, filed Feb. 14, 2009; see also Petition for Partial Reconsideration of Bahakel, filed Oct. 26, 2007. With respect to WBBJ, Bahakel initially requested that Appendix B be changed to specify an ERP of 1000 instead of 920, an HAAT of 320m instead of 323m, a blank antenna ID specification instead of antenna ID number 74935, and a coordinate change from 35° 38' 15" latitude and 88° 41' 32" longitude to 35° 38' 16" latitude and 88° 41' 33" longitude. In its withdrawal filing, Bahakel withdrew the request for a change in ERP, HAAT and antenna ID for WBBJ, but maintained its request to change the coordinates for that station. We deny the change requested by WBBJ in its request for partial withdrawal because it was filed too late for full consideration in this proceeding. Moreover, WBBJ recently filed its application for post-transition facilities based on its current Appendix B facility, which was granted on February 27, 2008. Consequently, WBBJ has obtained the relief it seeks through the application process instead and no further action is needed.

⁴ The DTV Table specifies a channel for each eligible full power broadcast television station. Appendix B sets forth specific technical facilities – ERP, antenna HAAT, antenna radiation pattern, and geographic coordinates – at which stations will be allowed to operate. Appendix B also includes information on service area and population coverage. See *Seventh Report and Order*, 22 FCC Rcd at 15711, App. B.

⁵ *Seventh Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 21 FCC Rcd 12100 (2006) ("*Seventh Further Notice*").

⁶ Of the 221 requests for action regarding individual stations, we grant, in whole or in part, 112 requests and wholly deny 19 requests, two of which are for unnecessary changes to Appendix B. See *infra* Section III.J. For the remaining 90 specific station requests, we find that, in light of the flexibility adopted in the *Third DTV Periodic* (continued....)

facilities to permit the station to use an existing analog antenna when the station returns to its analog channel for post-transition digital operations.⁷ Where possible, we have made the revisions requested by these petitioners. We note, too, that the flexibility we recently adopted in the *Third DTV Periodic Review Report and Order* will provide many of the petitioners with the opportunity to request and receive the facilities they sought in this docket when the station files its application for authorization on its final, post-transition channel.⁸ We also reiterate that requests for revisions to Appendix B in this docket, or for modifications in the application process, that are attempts to maximize beyond authorized post-transition facilities will not be granted at this time. However, as provided in the *Third DTV Periodic Report and Order*, stations will have the opportunity to request expanded facilities later this year.⁹

3. The DTV transition deadline - February 17, 2009 - is less than 12 months away.¹⁰ In view of the short period of time remaining before this statutory deadline, our goal herein has been to finalize DTV channels and facilities as expeditiously as possible to provide stations with the certainty they need to complete their digital buildout. As we have emphasized repeatedly in this proceeding and in the Third DTV Periodic Review proceeding, the Commission has no discretion to waive or change this fast-approaching statutory transition deadline. Full-power television stations not already operating digitally or ready to commence digital service upon expiration of the deadline for the transition on February 17, 2009 must go dark and risk losing their authorizations to operate after the transition date.¹¹

4. The revisions we make to the DTV Table herein will help many broadcasters to meet the transition deadline. As discussed further below, broadcasters that filed petitions that are denied herein, and broadcasters that seek relief but failed to file a petition for reconsideration, may still be aided by the considerable regulatory flexibility we recently provided in the *Third DTV Periodic Report and Order*. Together, this *Memorandum Opinion and Order on Reconsideration* and the *Third DTV Periodic Report and Order* will enable stations to meet their obligations to provide digital service before analog transmissions must cease. The ball is now in the broadcasters' court. Those that have not finalized their post-transition facilities must now work with all speed to complete those facilities to ensure that the public continues to receive television service post-transition.¹²

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Report and Order, these stations should make their requests in their application for post-transition facilities, through which process they may be able to obtain part, if not all, of the relief they requested in their petitions. *See infra* Sections III.D.1., n. 121, Section III.D.3., Section III.F., and Appendix D5.

⁷ We addressed and resolved 30 such requests that were raised during the comment period for the *Seventh Report and Order*.

⁸ *See Report and Order, Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, FCC 07-228 (rel. December 31, 2007) ("*Third DTV Periodic Report and Order*"). Reliance on the application process for modifying facilities is consistent with the requests and preferences of several petitioners, as described, *infra*. We also note that when stations filed their petitions for reconsideration, they were unaware of the flexibility we would provide in the application process, and many filed to preserve their rights, while advocating for revision through the application process rather than by reconsideration. *See, e.g.*, Comments of Koplur Communications International, Inc. filed Dec. 3, 2007; Petition for Reconsideration of Independent Communications, Inc. filed Oct. 26, 2007.

⁹ *See Third DTV Periodic Report and Order*, Section V.E., ¶ 148.

¹⁰ *See Digital Television and Public Safety Act of 2005* ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)).

¹¹ *See Third DTV Periodic Report and Order*, Section V.6., ¶ 85.

¹² The *Third DTV Periodic Report and Order* was published in the Federal Register on January 30, 2007. *See* 75 FR 5634-01 (Jan. 30, 2008). Stations that need to construct or modify post-transition facilities must file their (continued....)

5. In addition, we are adopting an *Eighth Report and Order* herein addressing a number of revisions to the DTV Table and/or Appendix B proposed in the *Eighth Further Notice of Proposed Rule Making* ("Eighth Further Notice"). In the *Eighth Further Notice*, we sought comment on tentative channel designations ("TCDs") for three new permittees and identified a number of other proposed revisions to the DTV Table and/or Appendix B advanced by commenters in either reply comments or late-filed comments to the *Seventh Further Notice*. In the *Eighth Report and Order*, we address comments received in response to the *Eighth Further Notice*.

II. BACKGROUND

A. The Channel Election Process and Development of the Final DTV Table of Allotments

6. Broadcast licensees selected their ultimate (*i.e.* post-transition) DTV channel inside the core spectrum (channels 2-51) through a channel election process established by the Commission in the *Report and Order* in the Second DTV Periodic Review proceeding.¹³ Under this process, licensees elected their preferred post-transition channel during one of three rounds. Channel elections that could be approved, as well as "best available" channels where appropriate, were locked in as tentative channel designations ("TCDs") and protected against new interference from subsequent channel elections with a strong presumption that a station's TCD would be its channel assignment proposed in the final DTV Table.¹⁴ In order to facilitate the channel election process and the development of a final, post-transition DTV Table, the Media Bureau announced a freeze on the filing of certain NTSC and DTV requests for allotment or service area changes.¹⁵

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applications promptly to receive construction permits. See Public Notice, "Third DTV Periodic Report and Order Published in Federal Register Today; FCC Forms 301 and 340 Now Available for Filing for Post-Transition CP Applications; FCC Form 387, Transition Status Report, Available and Due February 19, 2008; Expedited Processing of CP Applications Available Until March 17," DA No. 08-172 (rel. Jan. 30, 2008) ("Third Periodic Forms Effective PN"). Stations that need to construct their authorized post-transition facilities, or that need to modify their existing facilities to comply with the post-transition DTV Table Appendix B facilities, should file a CP application now. Stations must file their post-transition CP applications no later than March 17, 2008 if their construction deadline is August 18, 2008. If their construction deadline is February 17, 2009, stations must file no later than June 19, 2009. Extension requests pursuant to Section 73.624(d)(3) must be filed no earlier than 90 days, and no later than 60 days, before the relevant construction deadline. Stations must file their DTV Transition Status Reports using FCC Form 387 on or before February 19, 2008 and update these forms, as events warrant, by October 20, 2008.

¹³ *Report and Order, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket 03-15, 19 FCC Rcd 18279 (2004) ("Second DTV Periodic Report and Order") (recons. pending). The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order*, raising a number of issues, most of which have been rendered moot by the completion of the channel election process.

¹⁴ *Id.* at 18298, ¶ 46 n. 96.

¹⁵ See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810, 14810-11 (MB 2004) ("August 2004 Filing Freeze PN"). The freeze was imposed on August 3, 2004, prior to the commencement of the channel election process, in order to provide a stable database for developing the post-transition DTV Table. The freeze precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications. See *id.* See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538. In the *Second DTV* (continued....)

7. Prior to the first round of channel elections, the Commission required all licensees to file a certification (via FCC Form 381) by November 5, 2004 in order to define their post-transition facility.¹⁶ In these certifications, licensees had to decide whether they would (1) replicate their allotted DTV facilities, (2) maximize to their currently authorized DTV facilities,¹⁷ or (3) reduce to a currently authorized smaller DTV facility.¹⁸ In analyzing stations' channel elections, the Commission relied upon this "certification database" composed of TV station authorizations, including both analog and digital stations.¹⁹

8. In developing the final DTV Table and Appendix B, engineering evaluations were generated using computer analysis to determine station service coverage and interference.²⁰ During the channel election process, the Commission performed interference-conflict analyses in two circumstances: (1) where a station elected a channel that was different from its current DTV channel, and (2) to identify a "best available" channel. Values for the effective radiated power ("ERP") and the directional antenna radiation pattern were calculated to allow a station to match its coverage area based on its maximized or replication facilities as certified.²¹ For the purpose of these calculations, an interference conflict was found when it was predicted that more than 0.1 percent new interference would be caused to another station. That is, new interference was considered to constitute a conflict when that new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of

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Periodic Report and Order, the Commission noted that it would continue to process rulemakings in which a Notice of Proposed Rulemaking ("NPRM") had been issued prior to the adoption of the *Second DTV Periodic Report and Order*, but ordered the dismissal of all pending petitions to change the NTSC Table of Allotments ("NTSC Table") in which a NPRM had not yet been issued. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18308, ¶ 68.

¹⁶ Licensees were required to file their certifications (via FCC Form 381) by November 5, 2004. See Public Notice, "DTV Channel Election Information and Deadlines," 19 FCC Rcd 19569 (MB 2004). Stations that did not submit certification forms by the deadline were evaluated based on replication facilities. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41.

¹⁷ Many stations have applied for and been granted authorization to operate at facilities that are different from the facilities that were specified for their operation in the initial DTV Table and Appendix B, as amended in 1998. In most cases, the facilities allowed under these new authorizations allow stations to "maximize" their service coverage to reach a larger population than the facilities specified in the initial DTV Table and Appendix B.

¹⁸ For a discussion of the steps involved in the channel election process, see *Seventh Report and Order*, 22 FCC Rcd. at 15585-87, ¶¶ 7-13.

¹⁹ The certification database was made available in tables attached to the Public Notice, "DTV Channel Election Information and First Round Election Filing Deadline," 19 FCC Rcd 24141 (MB 2004). This database was used to determine and evaluate existing DTV service populations, existing interference, and new interference. The Commission stated that this data best reflect current service to viewers while preserving the service areas of currently operational DTV stations. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294, ¶ 37.

²⁰ These evaluations were based on the technical standards and methods set forth in Sections 73.622(e) and 73.623(c) of the Commission's rules, which (1) define the geographic service area of DTV stations, and (2) provide interference technical criteria for modification of DTV allotments included in the initial DTV Table. See 47 C.F.R. §§ 73.622(e), 73.623(c).

²¹ Calculations of new ERP and antenna patterns for stations' elected channels were performed in the same manner as those performed by the Commission to match DTV facilities to analog facilities; see *Sixth Report and Order*, 12 FCC Rcd at 14693, App. B. Population data from the year 2000 census was used. See *Seventh Further Notice*, 21 FCC Rcd at 12107, ¶ 21. See also *Second DTV Periodic Report and Order*, 19 FCC Rcd 18294, 18302-03, ¶¶ 37-38, 56.

that new interference.²²

9. In the *Second DTV Periodic Report and Order*, the Commission recognized that a special accommodation was necessary if a station with an out-of-core DTV channel elected to operate its post-transition DTV station on its in-core analog channel.²³ Stations that were eligible to participate in the channel election process and that had either an out-of-core DTV channel or no DTV channel (*i.e.*, a singleton with only an in-core analog channel) were permitted to select their in-core NTSC channel for post-transition DTV operation if it would cause no more than 2.0 percent new interference to a protected DTV station.²⁴ Where post-transition use of its NTSC channel by such a station was predicted to cause interference to a protected station in excess of 2.0 percent of the protected station's population coverage, the electing station was then made subject to the normal conflict-resolution procedures.²⁵

10. In early 2006, while the channel election process was underway, Congress enacted significant statutory changes relating to the DTV transition. Most importantly, the DTV Act established February 17, 2009 as the new hard deadline for the end of the DTV transition and the end of analog transmissions by full power stations.²⁶ The DTV Act does not provide for waivers or extensions of this

²² See *Seventh Further Notice* at 12107, ¶ 21. See also, *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294, 18302-03, ¶¶ 37-38, 56. Here, new interference to post-transition DTV operations was considered interference beyond that caused by existing analog and DTV operations (as set forth in the certification database information). Service coverage and interference conflicts were based only on the populations determined to be receiving service and new interference.

²³ The Commission stated that the 0.1 percent additional interference limit could be exceeded on a limited basis in order to afford these stations an improved opportunity to select their own NTSC channel. The Commission indicated that such allowance is justified because these licensees have only one in-core option available (*i.e.*, their NTSC channel) and may need this additional accommodation to be able to operate on their in-core channel after the end of the transition. The Commission's goal was to facilitate a station's election of its in-core analog channel if the station did not have an in-core DTV channel. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56.

²⁴ See Public Notice, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines For Interference Conflict Analysis," 20 FCC Rcd 13415 (MB 2005); *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18301-04, ¶ 44, 53-57 (describing conflict analysis). Any such stations that certified to their maximized facilities, however, would be permitted to use the 2.0 percent standard only to the extent that the predicted new interference also would not exceed the amount of interference that would have been caused by replication facilities. *Id.*

²⁵ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56. Where a station in round one or round two elected and received a TCD for a DTV channel that was not its current NTSC or DTV channel, the interference potential of that new channel was included in the service coverage and interference evaluations of subsequent elections. That is, new channels elected and tentatively designated in round one under approved NCAs were included in the service coverage and interference evaluations of channels elected in rounds two and three. Similarly, channels elected and tentatively designated in round two were included in the service coverage and interference evaluations in round three. *Id.* at 18297-98, ¶ 45 (describing NCAs).

²⁶ Section 3002(a) of the DTV Act amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note.

deadline for cessation of analog broadcasts.²⁷ The DTV Act also requires full power broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless users.²⁸ Full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital at the end of the transition on February 17, 2009.²⁹

11. Because the final channel allotments can be established only through a rulemaking proceeding, the Commission proposed the final DTV Table as an amendment to Section 73.622 in the *Seventh Further Notice* in this proceeding.³⁰ The Commission received more than 200 comments and reply comments in response to the *Seventh Further Notice*, the vast majority of which requested specific changes to the proposed DTV Table and/or proposed Appendix B facilities. In general, in an effort to expedite finalization of the DTV Table and Appendix B to permit stations to complete construction of their post-transition facilities, we granted commenters' requests for changes to the extent possible consistent with the standards outlined in the *Seventh Further Notice*, and particularly the 0.1 percent interference standard.³¹ Specifically, in developing the *Seventh Report and Order* DTV Table and Appendix B, where the proposed change requested by the commenter did not create new post-transition interference to a TCD of more than 0.1 percent, the request was granted. Where the interference standard was not met, and the affected station(s) did not agree to accept the interference, in general we denied the requested change except in limited circumstances. In addition, in circumstances where commenters requested changes prematurely or requested changes that should properly be considered in connection with an application for a construction permit or a modification of construction permit to build a facility identified in the new Table, we denied the request to change the DTV Table and/or Appendix B and directed that these requests be filed following adoption of the *Seventh Report and Order* and the *Report and Order* in the Third DTV Periodic Review proceeding.³²

²⁷ Congress originally established a flexible deadline of December 31, 2006 for completing the digital transition, which allowed for exceptions to the deadline. Specifically, prior to the DTV Act, the former 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85 percent of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (*i.e.*, via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). 47 U.S.C. § 309(j)(14)(B)(iii) (2005). In the DTV Act, Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception.

²⁸ See 47 U.S.C. § 337(e)(1).

²⁹ *Id.*

³⁰ In the *Seventh Further Notice*, the Commission noted that additional pending applications might be granted before an order finalizing the final DTV Table was adopted and stated that, to the extent possible, it would accommodate future new permittees in the proposed final DTV Table. See *Seventh Further Notice*, 21 FCC Rcd at 12118. Accordingly, the Media Bureau issued a related Public Notice announcing TCDs for six new permittees. Public Notice, "Revisions to Proposed New DTV Table of Allotments, Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the *Seventh Further Notice of Proposed Rule Making* in MB Docket No. 87-268," 22 FCC Rcd 102 (MB 2007) ("*New Permittees Public Notice*").

³¹ See *Seventh Report and Order*, 22 FCC Rcd at 15592, ¶ 25.

³² *Id.* at 15592, ¶ 26.

B. Third DTV Periodic Review

12. On December 22, 2007, the Commission adopted a *Report and Order* in the Third DTV Periodic Review proceeding.³³ In the *Third DTV Periodic Report and Order*, we adopted a number of procedures and rules changes designed to provide flexibility to broadcasters to ensure that they meet the statutory transition deadline and complete construction of their final, post-transition facilities. Among other things, we established construction deadlines for full-power television stations to construct their full, authorized post-transition (DTV Table Appendix B) facilities³⁴ and decided that stations moving to a different channel for post-transition operation would not be required to construct or complete a digital facility on their pre-transition DTV channel.³⁵ In addition, we announced our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities.³⁶ Until this date, we will maintain our freeze and, except as discussed below, will not accept maximization applications to expand facilities.

13. We also adopted several policies in the *Third DTV Periodic Report and Order* designed to accommodate stations that apply for facilities that deviate to some extent from the facilities set forth in the Appendix B adopted herein. For example, we adopted a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are moving to a different channel (*e.g.*, their analog channel) for post-transition operation.³⁷ This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, and will help the transition process by reducing the demands on equipment suppliers and installation crews during a critical time as the transition deadline nears. As noted above, we received a number of petitions for reconsideration from stations seeking changes to the DTV Table and Appendix B to permit them to use their analog antenna

³³ See *Report and Order, Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, FCC 07-228 (rel. Dec. 31, 2007) ("*Third DTV Periodic Report and Order*").

³⁴ Specifically, the Commission established the following construction deadlines: (1) May 18, 2008 for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; (2) August 18, 2008 for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; and (3) February 17, 2009 for stations building digital facilities based on a new channel allotment in the post-transition DTV Table and for stations facing a unique technical challenge, such as the need to reposition a side-mounted antenna, that prevents them from completing construction of their final DTV facilities before turning off their analog transmission. See *Third DTV Periodic Report and Order*, Section V.B.1. – 4.

³⁵ *Id.* at Section V.B.1.

³⁶ *Id.* at Section V.E.

³⁷ *Id.* Specifically, we will permit stations to expand beyond their authorized service area where the station demonstrates that such expansion: (1) would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area; (2) would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and (3) would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations. We also stated that, while we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers. Consistent with our existing rules, we will also consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest. *Id.*

when they return to their analog channel. The 5-mile waiver policy we adopted in the *Third DTV Periodic Report and Order*, in addition to the relief we grant herein, should provide significant relief to stations in this situation. In addition, with respect to evaluating interference in applications to construct post-transition facilities, we permitted stations a limit of 0.5 percent new interference in addition to that in the DTV Table Appendix B.³⁸ This approach provides more flexibility than the interference standard proposed in the *Third DTV Periodic Review NPRM*, which would have permitted a total of 0.5 percent interference post-transition, rather than 0.5 percent interference in addition to existing interference reflected in DTV Table Appendix B.³⁹ This added flexibility in the interference standard, together with the 5-mile waiver policy, should permit quick action on and approval of the vast majority of applications for the final DTV facilities adopted in the DTV Table and Appendix B herein.⁴⁰

III. DISCUSSION

A. General Issues

14. Most of the petitions for reconsideration filed in response to the *Seventh Report and Order* pertain to individual station situations. We will discuss these petitions in detail below, grouped according to the nature of the request. However, a number of petitioners raised general issues, and we begin by discussing these petitions.

1. MSTV Petition for Reconsideration and Clarification

15. We grant in part and deny in part the Association for Maximum Service Television, Inc. ("MSTV") Petition for Reconsideration and Clarification, which, along with several *ex parte* letters, urges the Commission to afford regulatory flexibility to stations to permit them to build post-transition facilities that will serve current viewers.⁴¹ We agree with many of the points raised by MSTV and have taken a

³⁸ See *Third DTV Periodic Report and Order*, Section V.F.

³⁹ See *Notice of Proposed Rule Making, Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 22 FCC Rd 9478, 9521-22, ¶¶ 104-106 (2007) ("*Third DTV Periodic Review NPRM*").

⁴⁰ In the *Third DTV Periodic Report and Order*, we stated that stations should file their applications for post-transition facilities as soon as possible in order to have the maximum time to order equipment and build their facilities. We provided expedited processing (generally within 10 days) to stations whose applications demonstrate the following requirements: (1) the application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities; (2) the application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (i.e., if the station is unable to build precisely the facilities specified in DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facilities specified in Appendix B with respect to predicted population); and (3) the application is filed within 45 days of the effective date of the *Third DTV Periodic Report and Order*, which became effective January 30, 2008. See *Third DTV Periodic Report and Order*, Section V.D.1. Stations that filed a petition for reconsideration of the *Seventh Report and Order* may receive expedited processing provided they file their applications within 45 days of the Commission's release of this *Memorandum Opinion and Order on Reconsideration* and otherwise qualify for expedited processing.

⁴¹ See Petition for Reconsideration and Clarification of MSTV, filed Oct. 26, 2007 ("MSTV Petition"). See also Letter from David L. Donovan, President, MSTV, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-91 (Oct. 23, 2007) ("MSTV October 23 *Ex Parte* Letter") and Letter from David L. Donovan, President, MSTV, to Marlene H. Dortch, Secretary, FCC (Dec. 19, 2007) ("MSTV December 19 *Ex Parte* Letter"). MSTV also submitted an *ex parte* letter which referenced both this docket and the docket in the Third DTV Periodic Review proceeding and discussed the issue of side-mount antennas. See Letter from David L. Donovan, President, MSTV, to Eloise Gore, Deputy Division Chief, Policy Division, Media Bureau (Dec. 19, 2007) ("Side-Mount *Ex Parte* Letter"). As the side-mount antenna issue was discussed in the Third DTV Periodic Review proceeding, the (continued...)

number of steps in this proceeding and in the Third DTV Periodic Review proceeding to address their concerns.

16. MSTV argued in both this docket and the Third DTV Periodic Review that the Commission should entertain and grant stations' requests as part of the applications process rather than through the allotment process based on petitions for reconsideration of the *Seventh Report and Order*.⁴² We agree and grant their petition to the extent that many of the requests made by specific broadcasters can be addressed at the application stage and do not require adjustments to Appendix B. However, we are taking a two-pronged approach by both revising Appendix B in response to petitions for reconsideration, where appropriate, and providing significant flexibility in the Third DTV Periodic Review proceeding for applications for post-transition facilities. These two approaches together will permit stations to apply for post-transition facilities that match as closely as possible the facilities that the station has requested, is authorized to serve, and that reach current analog viewers without causing interference to other stations or violating the freeze.

17. MSTV is particularly concerned that the Commission provide flexibility to stations that are not currently on their final, post-transition channels with respect to antenna patterns, particularly those stations that want to use their current analog antennas for post-transition operation. MSTV argues that, as a technical matter, it can be difficult and in some cases impossible to build DTV facilities to operate on a new channel that will replicate the interim DTV antenna pattern, which is the pattern the Commission tried to replicate in the DTV Table Appendix B.⁴³ In addition, MSTV states that many stations would like to use their analog antenna for their post-transition operations and this antenna may not be capable of replicating precisely the antenna pattern reflected in DTV Table Appendix B. MSTV also notes that, in light of these difficulties, many stations may have to reduce power significantly on the post-transition channel to shrink the station's service area in order to keep the service contour within the contour allotted on Appendix B.⁴⁴ This could result in a loss of service post-transition to many current viewers.⁴⁵ We shared MSTV's concern in this regard and therefore urged stations to file petitions for reconsideration, including stations that had not filed during the comment cycle following the *Seventh Further Notice*. These general concerns, as well as the specific circumstances portrayed in the individual petitions and comments, contributed to the Commission's decisions in the *Third DTV Periodic Review Report and Order* to provide procedures and policies affording greater flexibility in the application process.

18. MSTV notes that, in the Third DTV Periodic Review proceeding, broadcasters proposed a number of solutions to address these antenna pattern issues. Specifically, MSTV and the National Association of Broadcasters ("NAB") proposed that the Commission permit stations returning to their

(Continued from previous page)

December 19 Side-Mount *Ex Parte* Letter was reviewed and discussed in the *Third DTV Periodic Report and Order*. See *Third DTV Periodic Report and Order*, Section V.E., ¶ 151. MSTV also filed several other brief *ex parte* letters in this docket summarizing contacts with the FCC staff.

⁴² See MSTV Petition at 5. See also Petition for Reconsideration of Schurz Communications, Inc., filed Oct. 26, 2007, at 1 and Petition for Reconsideration of Sunflower Broadcasting, Inc., filed Oct. 26, 2007, at 5, n. 4 (arguing that changes in antenna specification or corrections of geographic coordinates or other discrepancies between Appendix B and stations' actual operations would be more appropriately addressed in the licensing process).

⁴³ See MSTV Petition at 3. In its October 23 *ex parte* letter, MSTV noted that the antenna pattern issue is particularly problematic for DTV stations currently operating on a UHF channel that plan to go back to a VHF channel. See MSTV October 23 *Ex Parte* Letter at 1.

⁴⁴ Univision Communications makes similar arguments in its Petition for Partial Reconsideration. See Petition for Partial Reconsideration of Univision Communications Inc., filed Oct. 26, 2007, at 2-3.

⁴⁵ MSTV Petition at 4.

analog channel for post-transition operations and planning to use their existing analog antenna to exceed the Appendix B service contour by no more than five miles.⁴⁶ In addition, in its Petition for Reconsideration and Clarification in this proceeding, MSTV also proposed, as an alternative measure to address antenna pattern concerns, that the Commission apply a more relaxed interference standard to stations returning to their NTSC channel (*i.e.*, permit such stations to cause a maximum of 2 percent interference for 12 months after February 2009) to afford these stations the ability to replicate their NTSC coverage.⁴⁷ MSTV asserted that the Commission could resolve the antenna pattern issue by adopting these proposals in the Third DTV Periodic Review proceeding. However, MSTV also urges the Commission to grant individual stations' requests for relief if they have filed petitions for reconsideration of the *Seventh Report and Order* in this proceeding.⁴⁸

19. As noted above, in the *Third DTV Periodic Report and Order* we adopted a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are moving to a different channel (*e.g.*, their analog channel) for post-transition operation.⁴⁹ This 5-mile waiver policy will allow added flexibility for stations that wish to use their existing analog antenna and, by permitting more such stations to use existing antennas, should reduce the demand for new equipment and installers for the remainder of the transition period. While we declined in the *Third DTV Periodic Report and Order* to permit more than 0.5 percent new interference generally, we stated that we would consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers.⁵⁰ We also stated that, consistent with our existing rules, we would consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest.⁵¹ We decline to adopt any further relief proposed by MSTV in this proceeding. As we stated in the *Third DTV Periodic Report and Order*, we believe that the 5-mile waiver policy, together with other policies adopted in that Order, provide sufficient flexibility to stations, especially when combined with the changes to the DTV Table Appendix B we adopt herein for stations that filed petitions for reconsideration.

20. We received a total of 124 timely filed petitions reflecting 221 requests for changes to the DTV Table and/or Appendix B for individual stations. We grant, in whole or in part, 112 of these requests. For these stations, as discussed further below, we are changing Appendix B to either reflect the specific parameters requested by the station for post-transition operation or to otherwise provide the station with substantial relief. For stations for whom the revised Appendix B adopted herein has been changed to reflect the exact parameters sought by the station, these parameters either match a current authorization for the station or the station will presumably file an application for post-transition operation requesting these parameters that will be eligible for expedited processing pursuant to the procedures

⁴⁶ *Id.* at 5-6 (*citing* Joint Comments of MSTV and NAB in MB Docket 07-91 (Third DTV Periodic Review proceeding), filed Aug. 15, 2007).

⁴⁷ *Id.* at 6. In its December 19 *ex parte*, MSTV clarified that, under its revised proposal, stations relying on either the 5-mile rule or the 2 percent temporary interference standard would not be required to meet the 0.5 percent interference standard proposed, and ultimately adopted, in the Third DTV Periodic Review proceeding until February 17, 2010. *See* MSTV December 19 *Ex Parte* Letter at 2.

⁴⁸ *See* MSTV Petition at 6-7.

⁴⁹ *See supra* Section II.B. and *Third DTV Periodic Report and Order*, Section V.E.

⁵⁰ *See Third DTV Periodic Report and Order*, Section V.E., ¶ 151.

⁵¹ *Id.*

adopted in the *Third DTV Periodic Report and Order*.⁵² Thus, for these stations there should be no antenna pattern issue left to resolve. With respect to stations for whom the revised Appendix B herein provides some but not all of the relief sought by the station, the flexibility adopted in the *Third DTV Periodic Report and Order* will permit these stations to file an application for post-transition operation that deviates to some extent from these Appendix B parameters. The combination of the relief provided herein and the flexibility adopted in the *Third DTV Periodic Report and Order* should be sufficient to address antenna pattern concerns for the vast majority of stations moving to a new channel post transition.

21. We grant MSTV's request that, where stations did not seek reconsideration of discrepancies between Appendix B and the facilities that DTV stations are using or intend to use post-transition,⁵³ they will not be deemed to have given up any rights to fix these discrepancies at the application or licensing stage.⁵⁴ We addressed the application process, as well as those applications that qualify for expedited processing, in the *Third DTV Periodic Report and Order*.⁵⁵ We emphasize that our goal in the Third DTV Periodic Review proceeding was to provide stations with regulatory flexibility to ensure that they meet the transition deadline. We believe that our actions in that proceeding will, for the vast majority of stations, address the type of minor discrepancies between Appendix B and post-transition facilities discussed by MSTV, even for stations that did not file petitions for reconsideration in this proceeding requesting a change to Appendix B.

22. It is worthwhile to clarify that the specific parameters listed on DTV Table Appendix B describe each station's service area based on its certification during the channel election process. In many cases this is a hypothetical facility.⁵⁶ When a station applies for the construction permit to build its facility, it may need to depart to some extent from the parameters listed on Appendix B to construct the actual facility, for example, to reflect an achievable directional antenna pattern or to locate the antenna at a height on the tower where mounting is possible. Station applications that cover the same area (or not more than five percent smaller) will be processed quickly. For such stations, no change to Appendix B will be necessary. For stations that wish to make a more significant adjustment, for example, to use their existing analog antenna, we will consider their petition for reconsideration, as described herein, as well as their forthcoming application for construction permit ("CP"). Stations that did not file a petition for reconsideration, or filed too late to be considered, may nevertheless apply for the facilities they want and we will consider their application consistent with the procedures and policies adopted in the *Third DTV Periodic Review Report and Order*.

2. Protection of DTV Allotments

23. We deny the request of several petitioners to abandon Appendix B and rely exclusively on the DTV Table of Allotments, specifying only communities and channel numbers and not the specific parameters for digital facilities.⁵⁷ According to these petitioners, flexibility for stations could be enhanced if the DTV Table of Allotments were similar to the analog Table of Allotments, which specifies

⁵² See *Third DTV Periodic Report and Order*, Section V.D.1., ¶ 140. See also *supra* note 37.

⁵³ See Petition for Reconsideration and Clarification of MSTV at 8-9.

⁵⁴ *Id.* at 9.

⁵⁵ See *Third DTV Periodic Report and Order* at Section D, ¶¶ 135-147.

⁵⁶ See *Seventh Report and Order*, 22 FCC Rcd at 15588-89, ¶¶ 17-18.

⁵⁷ See Petition for Reconsideration of Sunflower Broadcasting, Inc., filed Oct. 26, 2007, at 5, n. 4; Petition for Reconsideration of Mt. Mansfield Television, Inc., filed Oct. 26, 2007, at 2; and Petition for Reconsideration of Schurz Communications, Inc., filed Oct. 26, 2007, at 1-2.

only channels numbers and communities.⁵⁸ We disagree with the characterization of our process advanced by these petitioners. The DTV Table itself specifies communities and channel numbers. Appendix B specifies ERP, height above average terrain ("HAAT"), coordinates, and antenna identification numbers for stations in order to ensure that these station allotments are protected as digital stations construct their actual facilities. Contrary to these petitioners' arguments, use of Appendix B is consistent with the Commission's longstanding practice for analog and digital channel allotments. When channels are allotted to a community – either analog or digital – the Commission specifies parameters for the allotment and protects these parameters until the station receives an authorization for a specific facility, at which time the interference protection shifts to the specific facilities in the authorization. This is the same process we have followed for DTV allotments since the DTV Table of Allotments was adopted in 1997.⁵⁹ As we stated in the *Third DTV Periodic Report and Order*, once stations have a construction permit ("CP") or license for their post-transition facility, we will limit interference protection to stations' authorized coverage area.⁶⁰

3. TV Channels 5 and 6

24. Mullaney Engineering, Inc. ("MEI") and EME Communications ("EME") have filed petitions requesting that the Commission eliminate the requirement in Section 73.525 of the Commission's rules that new FM stations protect channel 6 DTV allotments or, alternatively, that it altogether eliminate channel 6, and possibly channel 5, from the digital TV allotment process and allocate that corresponding spectrum to the FM service.⁶¹ Dan Priestley and Robert E. Lee's comments supported MEI's proposal to reallocate TV channels 5 and 6 to FM broadcasting.⁶² For the reasons discussed below, we deny these requests.

25. MSTV opposes the requests by EME, MEI and Robert E. Lee, and urges their denial on procedural and substantive grounds.⁶³ MSTV argues such proposals to reallocate channel 6, and possibly channel 5 as well, would harm viewers relying on the news and information provided over those

⁵⁸ *Id.* See also 47 C.F.R. § 73.606.

⁵⁹ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*"). The DTV Table adopted in 1997 specified an effective radiated power ("ERP") and an antenna height above average terrain ("HAAT") for each DTV allotment. The Commission explained that the "values for these parameters were chosen to describe initial DTV allotments that would allow existing broadcasters to provide DTV service to a geographic area that replicates, to the extent feasible, the service area of their existing NTSC station." *Id.* at 14596-97, ¶13.

⁶⁰ See *Third DTV Periodic Report and Order*, Section V.F., ¶ 162. We also stated that, to avoid penalizing stations that apply for reduced facilities so as to not violate the freeze, we will continue to protect the DTV Table Appendix B facilities of stations until roughly one year after the date we intend to lift the filing freeze. *Id.*

⁶¹ Petition for Reconsideration and/or Comment by Mullaney Engineering, Inc., filed Oct. 26, 2007, at 1-2, 4-5 ("MEI Petition"); Petition for Reconsideration by EME Communications, filed Nov. 5, 2007, at 1 ("EME Petition"). Section 73.525 requires that applications for construction permits for new or modified facilities for a non-commercial educational ("NCE") FM station on Channels 200-220 (88.1-91.9 MHz) protect affected TV stations operating on channel 6 unless the application is accompanied by a written agreement between the NCE-FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE-FM facilities. See 47 C.F.R. §73.525. Affected stations are defined as TV Channel 6 stations located within specified distances of an NCE-FM station on FM channels 200-220. See *id.*

⁶² Brief Comment of Dan Priestley, filed Nov. 7, 2007; Comment of Robert E. Lee, filed Nov. 13, 2007, at 1-2.

⁶³ Opposition to Petitions for Reconsideration by MSTV, filed Dec. 3, 2002, at 1. See also Letter from Jonathan D. Blake and Eve R. Pogoriler, Counsel for MSTV, to Marlene H. Dortch, Secretary, FCC, at 1-2 (December 19, 2007).

channels.⁶⁴ MSTV states it is far too late in the allotment process to take one channel out of the pool of available assignments, given that more than 20 full-power television stations already have post-transition allotments on Channels 5 and 6,⁶⁵ and MSTV points out that these allotments represent the conclusion of a long, complex process involving years of coordination by broadcasters, the FCC, and Mexico and Canada to ensure that all television broadcasters have in-core allotments for their post-transition operations.⁶⁶ MSTV further argues that it would not be reasonable to remove two channels out of the available pool of channels for television broadcasting in light of the hundreds of low power television services using these channels and the requirement that the Commission create and protect 175 new DTV allotments pursuant to the Community Broadcasters Protection Act of 1999 (CBP Act).⁶⁷ Procedurally, MSTV argues that the Petitions should be denied as they are inappropriately filed either because they are late,⁶⁸ or because they cannot function as Reconsideration Petitions when the issues they raise were never fully presented for consideration in the *Seventh Report and Order*.⁶⁹

26. Petitioners' requests are beyond the scope of this Reconsideration of the *Seventh Report and Order*. Nevertheless, we address Petitioners' arguments only to reiterate the importance of maintaining the reciprocal system of protections we established between television stations using channel 6 and noncommercial educational ("NCE") FM radio stations, as well as the continuing allocation of channels 5 and 6 to the core spectrum for digital television service. In the *Reconsideration of the Sixth Report and Order*, the Commission determined that we would expand the core spectrum of channels available for digital television broadcasting to include all channels from 2 through 51, in order to remove uncertainties over the scope of spectrum available for DTV use and to facilitate the plans of stations considering future operations on channels 2-6 or 47-51.⁷⁰ In the *Reconsideration of the Sixth Report and*

⁶⁴ Opposition to Petitions for Reconsideration by MSTV, filed Dec. 3, 2002, at 1.

⁶⁵ *Id.* at 2.

⁶⁶ *Id.*

⁶⁷ *Id.* (citing Pub. L. No. 106-113, § 1000(a)(9), 113 Stat. 1536 (1999); see 47 U.S.C. § 336(f)(6)(B)). Consideration of these new allotments will be appropriate sometime after the current filing freeze is lifted.

⁶⁸ *Id.* (EME and Robert E. Lee filed petitions and comments after the filing deadline).

⁶⁹ *Id.* The Board of Trustees of The University of Alabama ("the University"), licensee of Television Station WUOA(TV), Channel 23, Tuscaloosa, Alabama, also opposes the MEI Petition on the grounds that the Commission had proposed allotting post-transition digital replication facilities on channel 6 to the University in the *Eighth Further Notice*, and because MEI's proposal seeks to alter the fundamental assumptions underlying the spectrum of channels available for television use. Opposition to Petition for Reconsideration by The Board of Trustees of The University of Alabama, filed Dec. 3, 2007, at 1-2 (citing *Eighth Further Notice*, 22 FCC Rcd at 15640-41, ¶ 148).

⁷⁰ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 13 FCC Rcd 7418, ¶¶ 41-42 (1998) ("*Reconsideration of the Sixth Report and Order*"). Particularly with respect to channels 2-6, the Commission considered the higher ambient noise levels on these channels as well as the possible interference between television and FM radio service in determining whether to appropriate this spectrum. *Id.* at ¶ 33. Furthermore, the Commission explicitly noted the objections of National Public Radio ("NPR") to the use of channel 6 for digital television in light of the significant potential interference such use posed to FM radio service, and it acknowledged NPR's concern that DTV operators bear the costs and burdens of protecting against interference in this spectrum instead of noncommercial educational radio interests. *Id.* at ¶ 40. Nevertheless, the Commission determined that expanding the core to channels 2-6 would reduce the number of out-of-core allotments, promote competition in the provision of DTV services, help alleviate overall adjacent DTV channel interference, and, importantly, reduce the impact on low power television stations and translators who occupied a significant number of low VHF positions and who would otherwise have been displaced or lost the opportunity to utilize that (continued....)

Order, the Commission maintained the protections afforded television stations operating on channel 6 by noncommercial FM radio stations operating on FM channels 200-220, and also established that it would be the initial responsibility of any new DTV licensee commencing operations to protect against or eliminate harmful interference to any FM radio stations already in operation.⁷¹ These rules protect existing DTV operations from new interference but do not protect unoccupied DTV allotments. They also require that new DTV operations protect existing FM operations from new interference.⁷² Because we continue to believe in the effectiveness of these protections established almost ten years ago, we deny requests such as those by EME and MEI that we eliminate the protections for channel 6 DTV stations given by NCE FM radio broadcasting stations on FM channels 200-220.

27. Likewise, we also will not reallocate TV channels 5 or 6 for use by FM radio broadcasting stations because these channels must continue to be available for use by stations in the television broadcasting service. In this regard, we stand by our now well-established determination that the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating channel 6 from TV service. For these reasons and various others⁷³ we have expressed in our rulemakings on these issues, we deny the petitioners' requests that we reallocate one or more TV channels to the FM radio broadcasting service.

B. Requests for Minor Adjustments

28. In the *Seventh Report and Order*, we made minor adjustments to the station's coordinates on Appendix B (e.g., three seconds or less latitude or longitude) based on requests from commenters.⁷⁴ In that *Order*, we made these adjustments both for stations whose pre- and post-transition DTV channels were the same and for stations moving to a different channel for post-transition operations. In this *Memorandum Opinion and Order on Reconsideration*, we grant five requests for minor adjustments to station coordinates for stations that are remaining on their pre-transition digital channel. At this stage in the allotment process, we need make such changes only for stations whose pre- and post-transition DTV channels are the same and that, therefore, generally need not file an application for construction or

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spectrum. *Id.* at ¶¶ 42-43. In the *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, the Commission was again presented with a request to eliminate channel 6 from use for television, and we stated our continuing belief that channel 6 should stay available for television service and that the additional opportunities for noncommercial FM coverage through use of the channel were outweighed by the costs of eliminating it. *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 14 FCC Rcd 1348, 1373, ¶ 54 and 1374, ¶ 57 (1998) ("1998 DTV *Second MO&O*").

⁷¹ *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd at ¶ 45, n.30 (citing Section 73.525 of the Commission's Rules).

⁷² See 47 C.F.R. § 73.623(f). Section 73.623(f) provides that parties requesting new allotments on channel 6 be added to the DTV Table of Allotments must submit an engineering study demonstrating that no new interference would be caused to existing FM radio stations on FM channels 200-220.

⁷³ If the TV stations that elected channel 5 or 6 for their post-transition operation were now required to find new channels, the post-transition DTV Table of Allotments and the careful, complex process, including international coordination, that led to its construction would be significantly disrupted. Providing for the full availability of these channels for new TV stations will help enable the Commission to provide for the 175 DTV allotments for new TV stations required under the CBP Act. Maintaining channels 5 and 6 for TV service will also protect the service of the many Class A, low power TV, and TV translator stations that use the low VHF channels and are expected to continue to use those channels when they switch to digital operation.

⁷⁴ See *Seventh Report and Order*, 22 FCC Rcd at 15596-15597, ¶¶ 35-37.

modification. Where the station's pre- and post-transition DTV channels are the same, the corrected coordinates are specified on a station license or construction permit, and the requested change did not result in a change of more than three seconds latitude or longitude for the station, we are making the requested correction. As we noted in the *Seventh Report and Order*,⁷⁵ accepting corrections to Appendix B of three seconds or less is consistent with the Commission's rules, which do not require a construction permit for such a correction before it can be licensed.⁷⁶ The stations for which we make such a correction are listed in Appendix D1 hereto and the changes requested by those stations are reflected in DTV Table Appendix B adopted herein. We deny the requests for similar changes from nine stations that are moving to a different channel for post-transition operations and that may request such minor coordinate changes as part of the station's application for post-transition facilities.⁷⁷ Such minor changes will not prevent applications that otherwise qualify from receiving expedited processing.

29. Some of the stations listed on Appendix D1 requested modification of Appendix B to round a station's geographic coordinates to the nearest whole second rather than merely truncate the data. For such petitioners whose pre- and post-transition channels are the same, and that provided us with station coordinates expressed to the tenth of a second, we have revised DTV Table Appendix B herein to round the coordinates to the nearest whole second.⁷⁸ This is the approach that we used in the *Seventh Report and Order* in response to requests for greater precision in expressing station coordinates.⁷⁹

30. In addition, for five stations we deny the request to change station coordinates because the geographic coordinates as listed in Appendix B match the coordinates listed on the station's license or construction permit.⁸⁰ We are revising parameters in Appendix B to match a current license or CP, but any desired adjustment to a license or CP itself must be requested by application. For each of these five stations, the pre- and post-transition DTV channels are the same. Thus, these stations already have an authorization on their post-transition channel and should revise the coordinates on their license or CP by requesting such revisions on FCC Form 302.

⁷⁵ *Id.*

⁷⁶ See 47 C.F.R. § 73.1690(b)(2). Three seconds of latitude or longitude is approximately 200 to 300 feet.

⁷⁷ The stations for which we decline to make minor adjustments herein but which may request these adjustments in an application are: KDSE, Dickinson, ND; KFME, Fargo, ND; KUPK, Garden City, KS; WBKO, Bowling Green, KY; WEAU, Eau Claire, WI; WIBW, Topeka, KS; WJHG, Panama City, FL; WSAW, Wausau, WI; and KBSH, Hays, KS. See *infra* Section III.F.

⁷⁸ See *infra* Appendix D1.

⁷⁹ See *Seventh Report and Order*, 22 FCC Rcd at 15597, ¶36.

⁸⁰ The five stations are KSEE, Fresno, CA (Granite Broadcasting Corporation, allotted channel 38 for post-transition operation; FCC File No. BLCDT - 20050914AAZ); WTAP, Parkersburg, WV (Gray Television, Inc., allotted channel 49 for post-transition operation; FCC File No. BLCDT - 20040423ABG); WTVY, Dothan, AL, (Gray Television, Inc., allotted channel 36 for post-transition operation; FCC File No. BPCDT - 19991029ADN); KKTV, Colorado Springs, CO (Gray Television, Inc., allotted channel 10 for post-transition operation; FCC File No. BLCDT - 20030512ADQ); WOWT, Omaha, NE (Gray Television, Inc., allotted channel 22 for post-transition operation; FCC File No. BPCDT - 20050706AAA). See Petition for Partial Reconsideration by Granite Broadcasting Corporation, filed Oct. 10, 2007, at 1-2; Gray Television, Inc. Petition for Reconsideration, filed Oct. 26, 2007, at 3 and Table A.

C. Requests to Make Changes to Certification

31. We grant 55 petitions consistent with our treatment in the *Seventh Report and Order*⁸¹ to permit changes to stations' facility certifications (FCC Form 381) based on appropriate demonstrations from these stations where such changes are consistent with the circumstances contemplated in the *Seventh Further Notice*. In paragraph 28 of the *Seventh Further Notice*, the Commission recognized that some stations have already constructed or received authorization to construct facilities on the station's TCD that provide service to areas that extend beyond that to which the station certified on FCC Form 381.⁸² Because the interference protection provided during the channel election process was limited to the facilities to which the station certified in FCC Form 381, the Commission noted that stations serving or authorized to serve areas beyond their certified area could become subject to interference in those areas.⁸³ The Commission stated that it would permit stations in this situation to propose to modify their certified facilities to match their authorized or constructed facilities.⁸⁴ Stations requesting such a change were required either to (1) submit an engineering analysis demonstrating that the proposed change to their certified facilities would not result in interference in excess of 0.1 percent to any licensee's existing TCD or (2) submit the signed, written consent of every affected licensee.⁸⁵ The Commission also stated in the *Seventh Further Notice* that stations in these circumstances seeking a change in their certification would be required to accept interference from any channel election already approved.⁸⁶

1. Requests That Meet the Interference Criteria

32. We grant 53 petitions, as we did in the *Seventh Report and Order*, to permit stations to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, where such stations have demonstrated in a petition for reconsideration that such modification of their facilities will conform to licensed or authorized facilities and where the proposed change to the Appendix B facilities either meets the interference criterion discussed above (*i.e.*, the proposed change would not result in interference in excess of 0.1 percent to any licensee's existing TCD) or, as discussed further below, the station affected agreed to accept the interference. We have made the changes requested by these petitioners and the changes are reflected in the revised DTV Table Appendix B adopted herein. A list of the stations for which we made these changes is attached hereto in Appendix D2. To address the requests of those commenters in this group whose stations are moving to a different channel for post-transition service, we recalculated their post-transition DTV coverage area based on their authorized or licensed DTV facility, as indicated by the file number shown in Appendix D2. Only one of these stations requires special explanation, KPXC, due to its atypical circumstances.

33. KPXC, Denver, CO. As noted on Appendix D2, we grant the request from Paxson Denver License, Inc. ("Paxson"), licensee of station KPXC-TV, channel 59, and permittee of KPXC-DT, channel 43, Denver, CO, which was allotted channel 43 in the DTV Table in the *Seventh Report and Order*.⁸⁷ In its FCC Form 381, Paxson certified to replication facilities,⁸⁸ which were reflected in the

⁸¹ See *Seventh Report and Order*, 22 FCC Rcd at 15597, ¶ 38.

⁸² *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 28.

⁸³ *Id.*

⁸⁴ *Id.* These changes, if approved, would be changes to the facilities reflected on DTV Table Appendix B.

⁸⁵ *Id.* at 12110, ¶ 29.

⁸⁶ *Id.*

⁸⁷ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App. A.

Seventh Report and Order Appendix B parameters for KPXC-DT. Paxson requests that the KPXC certification and Appendix B allotment be made consistent with its DTV construction permit originally granted on November 29, 2005.⁸⁹ While our interference analysis shows that the change requested by KPXC would cause 2.2 percent interference to KOAA, Pueblo, CO (analog channel 5, digital channel 42 for both pre- and post-transition), KOAA has submitted a letter stating that it consents to the allotment change requested by KPXC.⁹⁰

34. As we noted in the *Seventh Report and Order*, KPXC has encountered zoning issues that have been the subject of litigation.⁹¹ In comments filed in response to the *Seventh Further Notice*, Paxson sought a change in KPXC's certified facilities to conform to those it requested in a January 2007 construction permit application, including a site change.⁹² Paxson stated that the would-be tower owner at the original KPXC-DT site received initial local zoning board approval from the Board of Commissioners of Jefferson County in 2003, which was affirmed by the Jefferson County District Court.⁹³ In 2006, however, the decision was overturned by the Colorado Appeals Court, which remanded the case to the Board of Commissioners.⁹⁴ The Board of Commissioners subsequently sought certiorari from the Colorado Supreme Court.⁹⁵ Paxson recently informed the Commission that the Colorado Supreme Court has remanded the zoning case back to Jefferson County where it remains pending.⁹⁶

35. As Paxson is still lacking zoning approval for its preferred site for KPXC, it has informed the Commission that it will be filing an application to move to a new site. According to Paxson, the combination of the changes to Appendix B for KPXC granted herein and the flexibility adopted in the *Third DTV Periodic Report and Order* will permit it to file an application to specify a new tower site for KPXC. We continue to request that Paxson keep us informed concerning any relevant progress and events in its zoning case.

2. Requests By Operating Stations That Do Not Meet Interference Criteria

36. We grant requests from two stations, consistent with our treatment in the *Seventh Report and Order*, to permit stations that are already operating their final, post-transition DTV facilities to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, to reflect those facilities, even though such operations will exceed the 0.1 percent interference standard.

(Continued from previous page) _____

⁸⁸ See FCC File No. BCERCT-20041103AIF (KPXC FCC Form 381, filed Nov. 4, 2004).

⁸⁹ See Petition for Partial Reconsideration of Paxson Denver License, Inc. ("ION"), filed Oct. 26, 2007, at 1, n.1. See also CP file number BPCDT-1990923AAM extended by CP file number BEPCDT-20060330AKS.

⁹⁰ See Letter from David Whitaker, President and General Manager, KOAA-TV, to Marlene H. Dortch, Secretary, FCC, dated Dec. 21, 2007.

⁹¹ See *Seventh Report and Order*, 22 FCC Rcd at 15621-22, ¶¶ 98-99. See Letter from Scott S. Patrick, Counsel for Ion Media Networks, Inc., to Marlene H. Dortch, Secretary, FCC (Jan. 22, 2008) (Ion January 22 *Ex Parte* Letter). Paxson is continuing to pursue local approval for the original KPXC-DT tower site.

⁹² See Comments of Paxson Denver License, Inc. ("ION"), filed Jan. 8, 2007, at 1-2, n.3 (citing FCC File No. BMPCDT-20070104ACH).

⁹³ *Id.* at 2.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See Ion January 22 *Ex Parte* Letter at Attachment, *Board of County Comm'rs v. Canyon Area Residents for the Env't*, No. 06SC777, 2007 WL 4153502 (Colo. Nov. 26, 2007) (denying certiorari).

As described below, these stations requested changes to the proposed DTV Table Appendix B to reflect operating facilities where we have determined that the interference caused to the TCD of another licensee exceeds the 0.1 percent interference standard and there is no interference agreement with the affected station. While these stations are requesting changes to the parameters adopted in the *Seventh Report and Order* in situations where the level of interference exceeds the relevant standard, we find that they have met their burden of demonstrating that special circumstances justify a waiver⁹⁷ because they are already operating their final, post-transition DTV facilities. We believe it is unnecessary and unfair to require these already-operational facilities to reduce service. In addition, the stations receiving the interference have not filed an opposition to the stations requesting the change.

37. WBNX, Akron, OH. We grant the request of Winston Broadcasting Network, Inc. (“Winston”), licensee of station WBNX-TV, channel 55, and WBNX-DT, channel 30, Akron, OH, which was allotted channel 30 in the DTV Table in the *Seventh Report and Order*.⁹⁸ Winston requests that the parameters for WBNX in Appendix B be changed to conform the antenna ID number to the information reflected in the WBNX-DT license.⁹⁹ The Commission’s interference analysis shows that WBNX-DT’s licensed facility causes 0.16 percent interference to WEYI, Saginaw, MI (analog channel 25, digital channel 30 for both pre- and post-transition).¹⁰⁰

38. KALB, Alexandria, LA. We grant the request of Media General Communications Holdings, LLC (“Media General”), licensee of station KALB, channel 5, and KALB-DT, channel 35, Alexandria, LA, which was allotted channel 35 in the DTV Table in the *Seventh Report and Order*.¹⁰¹ Media General requests that the certification and Appendix B parameters for KALB be changed.¹⁰² The changes requested would make those parameters consistent with the KALB-DT license.¹⁰³ The Commission’s interference analysis shows that KALB-DT’s licensed facility causes 0.59 percent interference to KARD, West Monroe, LA (analog channel 14, digital channel 36 for both pre- and post-transition).

D. Requests for Modified Coverage Area

39. We grant the requests filed on behalf of 40 stations whose post-transition DTV channel is different from their pre-transition DTV channel to change the coverage area in the *Seventh Report and Order* DTV Table Appendix B.¹⁰⁴ In general, these petitioners argue that the facilities specified in the DTV Table Appendix B adopted in the *Seventh Report and Order* do not permit the station to provide

⁹⁷ The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972).

⁹⁸ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App A.

⁹⁹ See Petition for Reconsideration by Winston Broadcasting Network, Inc., filed Oct. 25, 2007 at 1-2. See also FCC File No. BLCDDT-20070430AXX (WBNX-DT license).

¹⁰⁰ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App. A.

¹⁰¹ See *Id.*

¹⁰² See Petition for Reconsideration of Media General Communications Holdings, LLC, filed Oct. 26, 2007, at 1-2.

¹⁰³ See BLCDDT-20060725ADI.

¹⁰⁴ The stations for which we are modifying the coverage area herein are listed in Appendix D3 and the modified parameters for those stations are reflected in Appendix B as modified herein.

service to the area served by the station's analog facility.¹⁰⁵ We deny the requests filed on behalf of 24 stations for which our adjustment would result in a smaller facility than that described by the parameters on Appendix B as adopted in the *Seventh Report and Order* or that would shift the station's service area in such a way that existing viewers would lose service post-transition.¹⁰⁶ In addition, we deny the requests filed by 13 stations for which our adjustment to Appendix B would result in impermissible interference.¹⁰⁷ Both groups of petitioners – those granted or denied – can apply for desired facilities in the application process.¹⁰⁸ Stations that are moving to a different channel for post-transition operation may also take advantage of the freeze waiver to expand up to five miles if needed to serve their analog viewers. Stations may also request further expansion when the freeze on maximizations is lifted later this year.

40. Many of these petitioners plan to return to their station's analog channel post-transition and request changes to the parameters specified on Appendix B to permit the station to use its existing analog antenna.¹⁰⁹ In general, these petitioners argue that it is difficult or impossible for the station to use their preferred antenna to serve the allotment specified on Appendix B. In many cases, in order to stay within this allotment, as required by the existing freeze on expansion of a station's contour, the station would be required to significantly reduce power, thereby potentially resulting in a loss of service post-transition to existing viewers. Other petitioners request changes to the power level or antenna specified in Appendix B in order to allow the station to continue to serve its analog viewers post-transition.¹¹⁰

¹⁰⁵ The Commission determined replication coverage based on the service provided by the station's DTV facilities established in Appendix B of the 1998 DTV *Second MO&O*, *supra* note 70. See also *Second DTV Periodic Report and Order*, 18314-15, ¶ 78; Instructions to FCC Form 381, Item 1(c).

¹⁰⁶ See *infra* ¶ 44 and note 119.

¹⁰⁷ See *infra* Section III.D.3.

¹⁰⁸ See *Third Periodic Forms Effective PN*, *supra* note 12. Stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations, must file applications for a CP on their final, post-transition channel. Stations that apply for facilities that match (or are no more than five percent smaller than) those specified in the post-transition DTV Table Appendix B may qualify for expedited processing of their CP applications. Such stations that are applying for facilities that do not precisely match those specified in the post-transition DTV Table Appendix B may benefit from the filing freeze waiver policy offered in the *Third DTV Periodic Report and Order*. Stations that have a pending petition for reconsideration of the *Seventh Report and Order* may file their CP applications for post-transition facilities now and are encouraged to do so if they can obtain their desired post-transition facilities under the filing freeze waiver policy. Applications that contemplate such deviations do not qualify for expedited processing. *Id.* at Section A.1.

¹⁰⁹ See, e.g., Petitions for Reconsideration of Belo Corp., filed Oct. 26, 2007 (relating to WHAS-DT, Louisville, KY and KTVB-DT, Boise, ID); CBS Corporation, filed Oct. 26, 2007 (relating to KSTW-DT, Tacoma, WA); Community Television of Southern California, filed Oct. 26, 2007 (relating to KCET-DT, Los Angeles, CA); Gannett Co., Inc., filed Oct. 25, 2007 (supplements filed November 15, 2007) (relating to KNAZ-DT, Flagstaff, AZ; KUSA-DT, Denver, CO; and WLBZ-DT, Bangor, ME); Hoak Media, LLC, filed Oct. 26, 2007 (relating to KABY-DT, Aberdeen, SD); and Hubbard Broadcasting, Inc., filed Oct. 26, 2007 (relating to KOBf-DT, Farmington, NM; WHEC-DT, Rochester, NY; and WDIO-DT, Hibbing, MN).

¹¹⁰ See, e.g., Petitions for Reconsideration of Gray Television, Inc., filed Oct. 26, 2007 (relating to WTOK-DT, Meridian, MS; WILX-DT, Onondaga, MI; and WBKO-DT, Bowling Green, KY); Hearst-Argyle Television, Inc., filed Oct. 25, 2007 (relating to WYFF-DT, Greenville, SC); and Arkansas Educational Television Commission, filed Oct. 26, 2007 (supplement filed Nov. 9, 2007) (relating to KETS-DT, Little Rock, AR).

41. In the creation of the initial Table of Allotments, DTV channels were chosen to allow service to best match the Grade B service contour of the analog station with which it was paired.¹¹¹ Implementation of this replication goal required a combination of transmitter site, ERP, directional antenna characteristics, and antenna height that is adequate to cover at least the same area as was served by the analog station. On FCC Form 381, the Commission permitted stations the choice of certifying to operate their post-transition DTV station based on: 1) a current station authorization; 2) a pending application for maximization that had not been authorized due to a pending international coordination issue;¹¹² or 3) replication facilities.¹¹³

42. For some stations moving to a different channel for post transition operations, including those returning to their analog channel, the parameters specified in Appendix B in the *Seventh Report and Order* may not permit precise replication of the station's coverage area, thereby potentially leaving current viewers unserved after analog transmissions cease. In some cases, this discrepancy between the Appendix B parameters and the analog coverage area may be due to translation discrepancies that occurred over a series of engineering calculations used to determine replication.¹¹⁴ In addition, for stations returning to their analog channel and planning to use their existing analog antenna, this antenna may not be capable of replicating the theoretical antenna pattern specified in Appendix B. These stations face the possibility of having to replace their analog antenna in order to remain within the theoretical contour described by Appendix B, thereby incurring additional expense and contributing to the already considerable demand for equipment and installation crews as the transition deadline approaches. In order to remedy these valid concerns, the *Seventh Report and Order* modified the coverage area for stations that filed such requests during the comment cycle.¹¹⁵

43. In addition, in the *Sixth Report and Order* in this docket, the Commission determined that the maximum permissible power for all allotments in the initial DTV Table would be 1,000 kW.¹¹⁶ For some stations whose analog channel was in the VHF band and whose initial DTV channel was in the UHF band, an ERP of 1,000 kW was not sufficient to permit replication of the station's analog service.¹¹⁷

¹¹¹ See *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶¶ 29-30.

¹¹² See *Second DTV Periodic Report and Order*, 18314-15, ¶ 78; Instructions to FCC Form 381, Item 1(c).

¹¹³ Stations certifying to replication facilities that had not changed their DTV channel since the 1998 DTV *Second MO&O* had their replication facilities based on the facilities established in Appendix B of the *Second MO&O*. See Instructions to FCC Form 381, Item 1(c). Stations that had changed their DTV channel since the DTV *Second MO&O* had their replication facilities based on the facilities established by the relevant Report and Order for that station. *Second DTV Periodic Report and Order*, 18314-15, ¶ 78. Eligible licensees and permittees without a DTV channel allotment were permitted to certify that they would operate their post-transition DTV station based on a currently authorized NTSC license or construction permit. See FCC Form 381, item 1(d).

¹¹⁴ Some of the discrepancies may also be due to the use of different propagation models for determining analog TV contours (F(50, 50) curves) and DTV contours (F(50, 90) curves). The variations may be enlarged when calculated facilities are in a different frequency band (low VHF, high VHF, or UHF) from the facility that is being replicated.

¹¹⁵ See *Seventh Report and Order*, 22 FCC Rcd 15607-10, ¶¶ 62-71.

¹¹⁶ See *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶ 30.

¹¹⁷ In recognition of this problem, the Commission adopted a note to Section 73.622(e)(2) of its rules, which protects stations with a UHF DTV channel in the initial DTV Table whose assigned power is 1000 kW by defining the station's protected DTV service area as the Grade B contour of the associated analog television station. The note to that provision provides:

NOTE TO PARAGRAPH (e)(2): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television (continued....)

In developing Appendix B during the channel election process, the Commission based replication on the station's initial DTV facilities and, for UHF stations with a 1,000 kW cap, the Commission assigned a power level to match the 1,000 kW digital contour. Some petitioners argue that, because of the 1,000 kW cap, the power level specified in Appendix B does not permit the station to replicate its larger analog Grade B contour, thereby depriving current analog viewers of service post-transition.¹¹⁸ Other stations not subject to the 1,000 kW cap simply request an increase in power or a change to the station's antenna pattern to permit the station to serve more of the area served by the station's analog facilities.¹¹⁹

44. In response to the petitions filed on behalf of these stations, we have provided the same relief herein that we provided to similarly situated stations in the *Seventh Report and Order*.¹²⁰ Specifically, we have recalculated Appendix B facilities based on replicating the analog coverage that was used to determine the station's initial DTV table facilities. If the recalculation would result in a reduction in the Appendix B facilities or would result in an undesirable shift in the station's service area, we are retaining the Appendix B facilities that we adopted in the *Seventh Report and Order* without change.¹²¹ Although we are not revising Appendix B in these latter cases, we note that these stations may be able to obtain much, if not all, of the relief they seek when they file an application for their final post-

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station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV Station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, i.e., 41 dB, as determined using the Longley-Rice methodology.

47 C.F.R. § 73.622(e)(2).

¹¹⁸ See, e.g., Petitions for Reconsideration of Gray Television, Inc., filed Oct. 26, 2007 (relating to WTOK-DT, Meridian, MS; WILX-DT, Onondaga, MI; and WBKO-DT, Bowling Green, KY) and Hearst-Argyle Television, Inc., filed Oct. 25, 2007 (relating to WYFF-DT, Greenville, SC).

¹¹⁹ See, e.g., Petition for Reconsideration of CBS Corporation at 2-3 (relating to KSTW, Tacoma, WA) and Petition for Reconsideration of Gray Television filed Oct. 26, 2007 at 2-3 (relating to WTOK, Meridian, MS).

¹²⁰ See *Seventh Report and Order*, 22 FCC Rcd at 15607-10, ¶¶ 62-71.

¹²¹ The stations whose Appendix B facilities are not being changed for this reason are: KABY, Aberdeen, SD; KAIL, Wailuku, HI; KARE, Minneapolis, MN; KAZT, Prescott, AZ; KETA, Oklahoma City, OK; KFPH, Flagstaff, AZ; KHAW, Hilo, HI; KHET, Honolulu, HI; KMEB, Wailuku, HI; KPNX, Mesa, AZ; KSFY, Sioux Falls, SD; KUSA, Denver, CO; KUVI, Bakersfield, CA; KWEX, San Antonio, TX; WBIR, Knoxville, TN; WEEK, Peoria, IL; WIRT, Hibbing, MN; WMAE, Booneville, MS; WMAZ, Macon, GA; WMMP, Charleston, SC; WNAC, Providence, RI; WOTF, Melbourne, FL; WTVX, Fort Pierce, FL; and WZZM, Grand Rapids, MI.

KMEB, Wailuku, HI (analog channel 10, pre-transition digital channel 20, and post-transition digital channel 10), and KAIL, Wailuku, HI (analog channel 7, pre-transition digital channel 36, and post-transition digital channel 7), and other co-located broadcasters are being forced to move off their current tower site on the Haleakala Summit due to a Hawaii State Department of Land and Natural Resources prohibition on DTV facilities, land use concerns, and possible radio signal interference to observatories maintained by the University of Hawaii Institute for Astronomy and the U.S. Air Force Research Laboratory. See Petition for Reconsideration by Montecito Hawaii License, LLC, filed Oct. 26, 2007, at 1-2 and Engineering Statement; Petition for Reconsideration by Hawaii Public Television Foundation, filed Oct. 26, 2007, at 2; Supplement filed by Hawaii Public Television Foundation, filed Nov. 14, 2007, at 2. KMEB and KAIL have both requested new parameters in Appendix B to reflect their move to new facilities. However, as the Commission's analysis indicates that the requested adjustment would result in a reduction in the Appendix B facilities for these stations, we are adopting herein the larger Appendix B facilities that were reflected for these stations in the *Seventh Report and Order*. Nevertheless, we note that both KMEB and KAIL are returning to their analog channels for post-transition digital service, and we believe the flexibility provided by the *Third DTV Periodic Report and Order* will allow these stations to obtain the relief they seek through the application process.

transition DTV channel pursuant to the rules and procedures adopted in the *Third DTV Periodic Report and Order*. As discussed above, we adopted a number of policies in that Order designed to give substantial flexibility to stations moving to a different channel for post-transition digital service, including stations that are returning to their analog channel and that plan to use their analog antenna.¹²² Specifically, the *Third DTV Periodic Report and Order* allowed for stations to expand up to five miles in any direction beyond their authorized service area where the station demonstrates that such expansion: (1) would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area; (2) would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and (3) would not cause impermissible interference, i.e., more than 0.5 percent new interference, to other stations. We also stated that, while we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers.¹²³

45. If our recalculation of Appendix B based on replication of the station's initial DTV table facilities would result in a larger coverage area or a desirable coverage area shift, and our analysis indicates that the recalculated facilities (1) meet the 0.1 percent interference standard specified in the *Second DTV Periodic Report and Order*¹²⁴ or (2) would cause more than 0.1 percent new interference but the affected station(s) agree to accept the interference, we are granting the request to change DTV Appendix B to reflect the larger or shifted coverage area. These stations are listed in Appendix D3, and the revised parameters for these stations are reflected in the revised DTV Table Appendix B, *infra*. We believe that permitting these changes to Appendix B is consistent with our overall goal in the DTV transition of encouraging replication of analog service. One of the Commission's objectives throughout the transition has been to permit broadcasters to reach with digital service the audiences they have been serving with analog service so that viewers will continue to have access to the stations that they are accustomed to receiving over the air.¹²⁵ In the *Third DTV Periodic Report and Order*, we emphasized again our goal of ensuring that stations provide digital service to their current analog viewers by the transition deadline so that over-the-air viewers will not lose TV service.¹²⁶ We remain committed to ensuring that viewers maintain the best possible television service after the transition date. The revisions granted to the stations listed in Appendix D3 are consistent with this goal as they will permit these stations to provide digital service to more of their established analog viewers.

1. Granted Requests For Which an Opposition Was Filed

46. For three stations listed on Appendix D3, WUSA, Washington, D.C., WHAS, Louisville, KY, and WPBN, Traverse City, MI, there was an opposition filed to the station's petition for reconsideration. We briefly discuss these oppositions and related pleadings below. As described above, for all stations listed on Appendix D3, including WUSA, WHAS, and WPBN, our recalculation of Appendix B herein resulted in a larger coverage area consistent with our interference standards. Accordingly, we revised Appendix B for these stations to provide them with this larger coverage area.

¹²² See *supra* Section II.B. See also *supra* Section, III.A.1.

¹²³ See *supra* Section II.B.

¹²⁴ Stations that had either an out-of-core DTV channel pre-transition or no DTV channel (i.e., a singleton with only an in-core analog channel) and that were moving to their analog channel for post-transition operation were permitted to cause up to 2.0 percent new interference to protected DTV stations. See *supra* ¶ 9.

¹²⁵ *Second DTV Periodic Report and Order*, 19 FCC Red at 18311, ¶ 72.

¹²⁶ See, e.g., *Third DTV Periodic Report and Order*, Section V.B.7.

While these revisions to Appendix B may not include the specific parameters requested by WUSA, WHAS, and WPBN in their petitions, the revised Appendix B parameters together with the flexibility adopted in the *Third DTV Periodic Report and Order* should provide to these stations some, if not all, the relief they seek when they file applications for post-transition facilities.

47. WUSA, Washington, D.C. We grant, in part, the request of Gannett Co. Inc. ("Gannett"), indirect owner of WUSA, channel 9, and WUSA-DT, channel 34, Washington, D.C., allotted channel 9 in the DTV Table in the *Seventh Report and Order*.¹²⁷ Gannett submitted a petition for reconsideration requesting to amend the Form 381 certification of WUSA-DT to specify the station's replicated service area rather than the maximized service area in order to permit the station to use an existing combined analog antenna for its post-transition DTV operations.¹²⁸ Sonshine Family Television, Inc. ("Sonshine") filed an opposition to the petition claiming that the proposed revised allotment for WUSA would cause interference to WBPB-DT, Bethlehem, PA (analog channel 60, post-transition digital channel 9) in excess of the applicable interference standard.¹²⁹ In response to a later pleading filed by Gannett, Sonshine revised its position to support the WUSA proposal if certain power limitations were met by the post-transition WUSA facilities.¹³⁰ The Commission recalculated Appendix B facilities for WUSA pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference from the revised Appendix B facilities for WUSA to WBPB or any other station and the revised WUSA parameters are reflected in the Appendix B adopted herein. While these revised parameters may not reflect all of the changes requested by Gannett, the changes to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* for the application process should provide all or much of the relief sought for WUSA.

48. WHAS, Louisville, KY. We grant, in part, the request of Belo Corp. ("Belo"), licensee of WHAS, channel 11, and WHAS-DT, channel 55, Louisville, KY, allotted channel 11 in the DTV Table in the *Seventh Report and Order*.¹³¹ Belo submitted a petition for reconsideration requesting that its Form 381 certification be amended to specify the WHAS replicated analog service area rather than its maximized service area and that Appendix B be modified to reflect an omni-directional antenna pattern that would permit WHAS to use its existing analog omni-directional antenna for post-transition operations.¹³² Primeland Television, Inc. filed an opposition arguing that the proposed changes to WHAS

¹²⁷ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App A.

¹²⁸ See Petition for Reconsideration of Allbritton Communications Company and Gannett Co., Inc., filed Oct. 10, 2007 (supplement filed Oct. 26, 2007). See also Reply in Support of Petition for Reconsideration of Gannett Co. Inc., filed Nov. 16, 2007 ("Gannett Reply"). The petition was filed by Gannett on behalf of WUSA and by Allbritton on behalf of WJLA, Washington, D.C., to permit WUSA and WJLA to use their existing combined analog antenna for post-transition operations. Sonshine did not oppose the proposed revised WJLA allotment.

¹²⁹ See Opposition to Petition for Reconsideration of Sonshine, filed Nov. 6, 2007. Sonshine argued initially that the proposed revised WUSA allotment would cause new interference to WBPB of 3.744 percent. *Id.* at 3.

¹³⁰ In a pleading filed after the Gannett Reply, Sonshine states that it supports the Gannett proposal if the actual measured power on any and all azimuths pertinent to WBPB-DT does not exceed 8.7 kW. See Limited Opposition to Petition for Reconsideration and Supplement by Gannett Co., Inc., filed Dec. 3, 2007, at 4.

¹³¹ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App A.

¹³² See Petition for Reconsideration of Belo Corp., filed Oct. 26, 2007, at 2-3. Specifically, Belo requests that Appendix B be modified to reflect operation of WHAS on channel 11 with an omni-directional antenna at a power level of 6kW and HAAT of 392 meters. *Id.* at 3. But see *id.* at Attachment 2 (engineering statement recommending that Appendix B for WHAS be amended to specify an ERP of 8.9 kW).

are premature and will cause substantial interference to the post-transition operations of WLFI, Lafayette, LA (analog channel 18, post-transition digital channel 11).¹³³ Belo acknowledges in its petition that its proposed changes to WHAS would cause interference to WLFI-DT, but argues that its proposal actually represents a reduction from the level of interference currently caused to WLFI-TV by WHAS-TV's analog facility.¹³⁴ In its opposition, Primeland argues that the facilities specified in the DTV Table concern post-transition operations and that any masking interference caused by WHAS's analog facilities should be disregarded.¹³⁵ In reply Belo argues that grant of its petition would best serve the public interest as the changes it requests for WHAS will permit existing analog viewers of that station to receive WHAS digital service, while those changes will not deprive any current analog viewers of WLFI of that station's digital service.¹³⁶ The Commission recalculated Appendix B facilities for WHAS pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference from the revised Appendix B facilities for WHAS to WLFI or any other station and those revised WHAS parameters are reflected in the Appendix B adopted herein. While these revised parameters may not reflect all of the changes requested by Belo, the changes to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* should provide all or most of the relief sought for WHAS.

49. WPBN, Traverse City, MI. We grant, in part, the petition for reconsideration filed on behalf of WPBN. Barrington Traverse City License LLC, licensee of television station WPBN, channel 7, and WPBN-DT, channel 50, Traverse City, MI, was allotted channel 7 for post-transition operations in the *Seventh Report and Order*.¹³⁷ In its petition for reconsideration, Barrington seeks revised technical parameters for WPBN's post-transition operations in order to operate at the coordinates and height of its channel 7 analog operation, using its analog antenna.¹³⁸ Barrington states that its allotted post-transition facility will serve just over 50 percent of the population served by its analog grade B signal.¹³⁹

50. WOOD License Company, LLC, licensee of WOOD-TV/DT in Grand Rapids, Michigan, opposes Barrington's petition on the grounds that granting the requested change for WPBN would cause interference to WOOD's post-transition operations on DTV channel 7, resulting in loss of service to 11,868 persons or 0.52 percent of WOOD's service population.¹⁴⁰ In its reply, Barrington argues that WOOD is incorrect and that the requested allotment for WPBN would actually cause substantially less interference to WOOD-DT post-transition than is caused currently by the WPBN analog facility.¹⁴¹

51. The Commission recalculated Appendix B facilities for WPBN pursuant to the process

¹³³ See Partial Opposition of Primeland Television, Inc., filed Dec. 3, 2007. The Belo petition for reconsideration addressed two stations: WHAS and KTVB, Boise, ID. Primeland took no position with respect to the proposed changes to KTVB. Primeland also states that WLFI has declined to enter into an interference agreement with WHAS. See Opposition of Primeland at 2, note 5.

¹³⁴ See Belo Petition for Reconsideration filed Oct. 26, 2007, at 4.

¹³⁵ See Opposition of Primeland filed Dec. 3, 2007, at 4.

¹³⁶ See Reply to the Partial Opposition of Primeland Television, Inc., filed Dec. 13, 2007, at 4-7.

¹³⁷ See *Seventh Report and Order*, 22 FCC Rcd at 15647, App. A.

¹³⁸ See Petition for Reconsideration of Barrington, filed Oct. 26, 2007, at 1-2.

¹³⁹ *Id.* at 2.

¹⁴⁰ See WOOD License Company, LLC Opposition, filed Dec. 3, 2007, at 1-2.

¹⁴¹ Barrington Reply to Opposition, filed Dec. 21, 2007, at 1-2.